

Lunch and Learn: Recent Changes to the Tennessee Public Records Act

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Background Information

- ◆ The act was passed as a symbol of Tennessee's commitment to transparency and openness in government.
- ◆ Tennessee's commitment to transparency in government was first evidenced in the Tennessee Constitution (1870).
- ◆ Article II of the Constitution deals with the distribution of power between the three branches of government. Section 21 of Article II says, "[e]ach House [of the General Assembly] shall keep a journal of its proceedings, and publish it, except such parts as the welfare of the State may require to be kept secret. . ."
- ◆ Section 22 of Article II says, "[t]he doors of each House and of committees of the whole shall be kept open, unless when the business shall be such as ought to be kept secret."

Tennessee Open Government Statutes

- ◆ Tennessee Public Records Act, 1957
(T.C.A. § 10-7-501 et seq.)
- ◆ Tennessee Open Meetings Act, 1974
(T.C.A. § 8-44-101 et seq.)

2008 Open Records Legislation

- ◆ Public Chapter 853, Public Acts of 2008, effective May 1, 2008, makes telephone and cell phone numbers and certain residential information of public employees confidential.
- ◆ Public Chapter 1179, Public Acts of 2008, effective July 1, 2008, establishes the Office of Open Records Counsel, specifies records custodian response time, fees for duplication, and makes other changes.
- ◆ Additionally Public Chapter 923, Public Acts of 2008, effective July 1, 2008, allows Knox County government to utilize internet relay chat on a pilot project basis.

Tennessee Public Records Act (TPRA)

- ◆ The Act begins with the general premise that all government records, whether state or local, are open for inspection by citizens of Tennessee. Then, much like in the Constitutional provisions, exceptions are enumerated.
- ◆ T.C.A. § 10-7-503(a)(2)(A) (*effective July 1, 2008*):
All state, county and municipal records shall at all times, during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for **personal inspection** by any **citizen** of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by **state law**.

Public Record Defined

- ◆ “‘Public record or records’ or ‘state record or records’ means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.”

T.C.A. § 10-7-301(6) and Public Chapter 1179

The Test

- According to the Tennessee Supreme Court in *Griffin v. City of Knoxville*, the test for determining whether a record is public is “whether it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.” *Griffin v. City of Knoxville*, 821 S.W. 2d 921, 924 (Tenn. 1991).

Examples of Public Records

1. personnel records
2. arrest records/divorce records
3. civil and criminal case dispositions
4. emails
5. financial or performance audits
6. Site plans
7. Meeting agendas/minutes

Tennessee Public Records Act

- ◆ T.C.A. § 10-7-504 provides a list of records that are not open for public inspection; however this list is not exhaustive. Most of the exceptions to the act are codified in various other parts of the Code.

Exceptions to the TPRA

Examples of Exceptions to the TPRA:

1. The records of students in public educational institutions are confidential. (T.C.A. § 10-7-504(a)(4)(A)).
2. The identifying information compiled and maintained by any governmental entity concerning a person who has obtained a valid order of protection document may be confidential if certain steps are followed. (T.C.A. § 10-7-504(a)(16)(B)).
3. The telephone number, address and any other information which could be used to locate the whereabouts of a domestic violence shelter or rape crisis center may be treated as confidential by a governmental entity, and shall be treated as confidential by a utility service provider as defined in subdivision (a)(15) upon the director of the shelter or crisis center giving written notice to the records custodian of the appropriate entity or utility that such shelter or crisis center desires that such identifying information be maintained as confidential. (T.C.A. 10-7-504(a)(17)).

Exceptions

4. The credit card number of persons doing business with the state or political subdivision thereof and any related personal information identification numbers (PIN) or authorization codes. (T.C.A. § 10-7-504(a)(19)).
5. Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program. (T.C.A. § 10-7-504(d)).
6. The following records or information of any state, county, municipal or other public employee, or of any records of any governmental employee that are in the possession of a governmental entity or any person in its capacity as an employer that contain *home and cell phone numbers; residential information (including street address, city, state and zip code) for state employees and residential street address for county, municipal and other employees; bank account information; social security number; driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job; and the same information of immediate family members or household members.* (T.C.A. 10-7- 504(f)(1)).

Exceptions

7. T.C.A. § 36-1-102(6)(B) makes adoption records confidential; but see also T.C.A. § 36-1-127.
8. Juvenile court files and records, except those dealing with traffic offenses, are only open to inspection by a limited number of individuals. (T.C.A. § 37-1-153).
9. All documents relative to the placement, plan, or care of any child in the custody of the Department of Children's Services, foster care, or any other agency providing care. (T.C.A. § 37-2-408(a)).
10. Any and all records as well as the identity of any minor who petitions the court for an abortion (T.C.A. § 37-10-304).

Exceptions

11. Expunged records (T.C.A. § 40-32-101).
12. Information communicated to or obtained by an accountant as a result of the confidential nature of employment and/or information derived from professional employment is confidential. (T.C.A. § 62-1-116).
13. The records of a polygraph given administered by law enforcement (T.C.A. § 62-27-124(c)).
14. The patient records of a physician are confidential. (T.C.A. § 63-2-101).
15. Taxpayer information submitted to the commissioner of the Department of Revenue (T.C.A. § 67-1-110).

Exceptions

- 16. Tenn. R. Crim. P. 16(a)(2) provides for the confidentiality of investigative files pertaining to pending or contemplated criminal action.
- 17. Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- 18. Family Educational Rights and Privacy Act (FERPA)
- 19. Tenn. Sup. Ct. R. 8, RPC 1.6-Attorney-Client Privilege

Response to an Open Records Request

- Custodian may take up to 7 business days to:
 - ◆ Provide access to record;
 - ◆ Deny in writing access to record with explanation of basis for denial; or
 - ◆ Indicate additional time necessary to produce the record.
- Until the Office of Open Records Counsel (OORC) develops a schedule of reasonable charges, a custodian may require the requestor to pay the custodian's actual cost incurred in producing the records. Actual costs include but are not limited to the following:
 - a. The making of the extracts, copies, etc...
 - b. The hourly wage of the employee(s) necessary to produce the requested records.
- *A custodian cannot charge for labor until it has taken the custodian more than five (5) hours to produce the requested records. [emphasis added]*

Response to an Open Records Request (cont.)

- A custodian may not require a written request to view a public record.
- A records custodian may not assess a charge to view a public record.
- A custodian may require a requestor to produce photo identification with an address in order to inspect or receive copies of records.

Response to an Open Records Request (cont.)

- A request for copies may be required to be writing.
- A request for copies “shall be sufficiently detailed to enable the custodian to identify the specific records”.
- The custodian shall provide the requestor an estimate of the reasonable cost for producing the requested records.

3 Tips for Responding to an Open Records Request

1. Make sure that you are the correct record custodian for the record requested.
2. Work with requestor to be as specific as possible about the record being requested.
3. Be familiar with your office's policy and procedures for responding to a records request, including redaction practices.

Office of Open Records Counsel

The functions of the Office include:

1. Working to resolve issues between citizens who have made open records request and the local government entity that has either delayed granting access or denied access to the records.
2. Issuing opinions as expeditiously as possible to local government officials, the public and the media regarding whether certain records are open for public inspection or are confidential, and therefore not open for public inspection; and posting the opinions on the web.
3. Monitoring legislative bills that deal with open record issues.
4. Educating citizens and public officials through establishment of educational programs and materials about Tennessee's Open Meetings laws.



Office of Open Records Counsel

5. Educating citizens and public officials through speaking engagements about the TPRA.
6. Reviewing open record policies of governmental entities to verify compliance with current state law.
7. Establishing a schedule of reasonable fees for copies and duplication of public records, developing best practice for access to open records (including various forms), and developing a policy for responding to frequent and multiple requests for access and copies.
8. Working with 13 member Advisory Committee on Open Government for guidance and advice.

Opinions of Office of Open Records Counsel

- ◆ <http://comptroller.state.tn.us/openrecords/opinion.htm>
- 08-01: Fee components and duplication
- 08-02: Interplay of litigation with TPRA
- 08-03: Audio recordings of commission meetings
- 08-04: Juvenile traffic offense
- 08-05: Cell phone records
- 08-06: On-site computer access
- 08-07: Format of Public Record Requested
- 08-08: Effective date of Public Chapter 853
- 08-09: Public records request for emails
- 08-10: Access to public records and review of a copying policy for compliance with the Tennessee Public Records Act
- 08-11: Access to constituent communications received by an appointed /elected local government official
- 08-12: Specificity and Computer Access

OORC Contact Information

For question regarding local government open records issues or to set up a time for us to come and speak about the TPRA, call Ann Butterworth or Elisha Hodge at (615) 401-7891, 1-866-831-3750 or email us at open.records@state.tn.us .

Our website is

<http://comptroller.state.tn.us/openrecords/>

